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10/766,164

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FURQUAN A. ANSARI and AJAY SATHYANATH

Appeal 2009-007951
Application 10/766,164
Technology Center 2400

Before ROBERT E. NAPPI, MARC S. HOFF, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

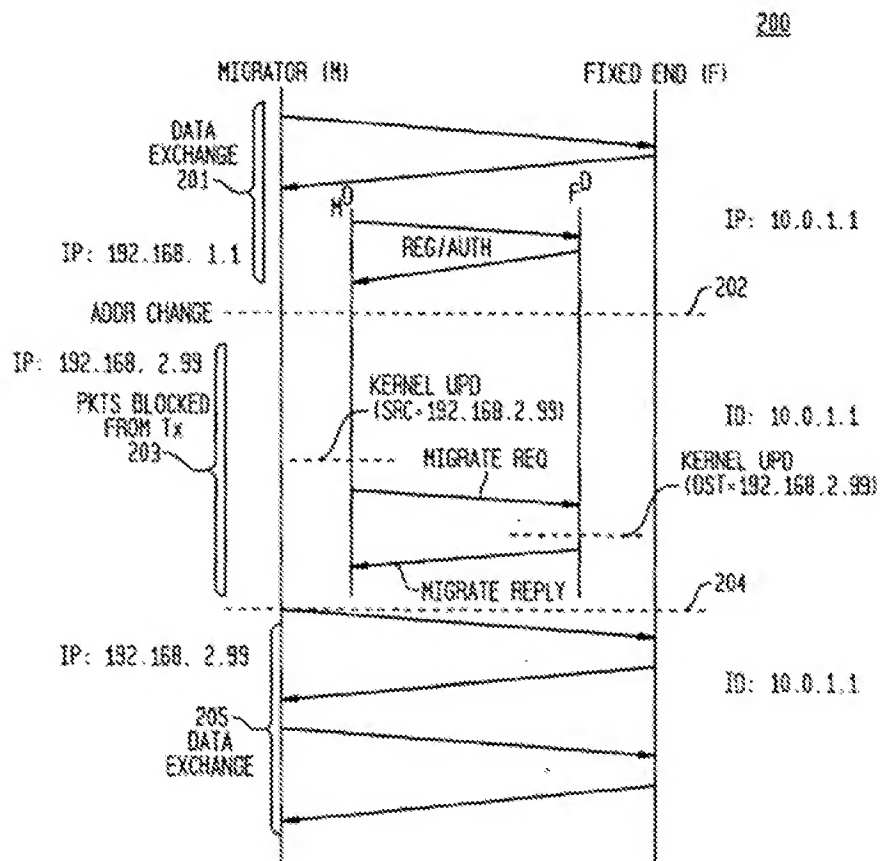
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-5 and 8-22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' Figure 2 is reproduced below:



Appellants' Figure 2 and claimed invention are directed to changing a migrator's IP address to a new IP address in a TCP session between a migrator and a fixed endpoint (the non-migrator) in a packet network (Spec. 1:5-7, 9:2-3). The migrator sends messages with the migrator's new IP address to the fixed endpoint using an out-of-band channel (between M^D and

F^D) that is separate from the existing TCP session channel (between M and F) (Spec. 9:4-8, 10:1-3).

Claim 1, reproduced below, is representative of the subject matter on appeal (emphasis added):

1. A method of migrating from a current endpoint address to a new endpoint address by a migrator during a session between the migrator and a non-migrator in a packet-based communication system, the method comprising the steps of:

(a) changing, in the migrator, the current endpoint address to the new endpoint address;

(b) suspending transmission to the non-migrator of packets with the new endpoint address;

(c) *informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address;* and

(d) resuming transmission to the non-migrator of packets with the new endpoint address.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Gannage

US 2004/0151158 A1

Aug. 5, 2004

Daichi Funato et al., *TCP-R: TCP Mobility Support for Continuous Operation*, PROC., 1997 INT'L CONF. ON NETWORK PROTOCOLS 229 (Oct. 1997).

The following rejection is before us for review:

The Examiner rejected claims 1-5 and 8-22 under 35 U.S.C. § 103(a) as being obvious over Funato in view of Gannage.¹

¹ The Examiner withdrew the rejections of dependent claims 6 and 7 (Ans. 20). Thus, these claims are not before us.

ISSUE

Did the Examiner err in determining that Funato in view of Gannage teaches the limitation of “informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address” as recited in claim 1?

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence:

1. Gannage teaches sending notifications on a notification channel that is separate from the main message channel (¶ [0023]).
2. Gannage teaches that “[t]he notification channel is intended to be a signaling channel and has a very fast response time” (*id.*).
3. Gannage teaches using the notification channel for the additional purpose of receiving “a voice message with a small time lag in a pseudo streamed fashion with reasonably good quality” (¶ [0030]; *see* ¶ [0026]; Fig. 5).
4. Funato teaches after the mobile host (MH) obtains a new IP address, the mobile host sends a redirect message to its correspondent host (CH) (p. 233, col. 2; Fig. 2).

PRINCIPLES OF LAW

The Supreme Court stated that “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the

legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The field of endeavor can be correctly determined “by consulting the structure and function of the claimed invention as perceived by one of ordinary skill in the art” with “reference to explanations of the invention’s subject matter in the patent application.” *In re Bigio*, 381 F.3d 1320, 1325-26 (Fed. Cir. 2004).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981) (citations omitted).

“[W]hen . . . the prior art . . . is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR*, 550 U.S. at 416 (citation omitted).

ANALYSIS

a) Was the combination of Funato in view of Gannage proper?

Appellants argue (App. Br. 11-12; Reply Br. 3-5) that the combination of Funato and Gannage would not have been obvious to meet the limitation of “(c) *informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address*” as recited in claim 1 (emphasis added) and similarly recited in claims 12, 20, 21, and 22.

Appellants contend (App. Br. 11-12) that the motivation cited by the Examiner (Ans. 23), that sending notification messages in a separate out of band channel will result in faster data delivery, does not make sense. Appellants contend that Gannage paragraph [0030] teaches that “using a separate channel does not, in fact, reduce transport delays, but actually causes additional delays” (App. Br. 11-12 (emphasis omitted)).

We are not persuaded. The Examiner reasons (Ans. 23-24), and we agree, that Gannage paragraph [0023] provides motivation for modifying Funato by using Gannage’s separate channel for *notifications* because, similar to the notification used in Appellants’ disclosure (Spec. 10:1-3) (i.e., to notify the new IP address only, not to send data packages), Gannage’s separate channel provides a very fast response time (FF 1, 2). Gannage paragraph [0030] cited by Appellants (App. Br. 12; Reply Br. 4) is not relevant to the Examiner’s motivation for *notifications* because Gannage paragraph [0030] discusses the additional function of receiving *pseudo streamed voice messages* (not notifications) on a separate channel (FF 3) which was not relied upon by the Examiner. Moreover, Gannage paragraph [0030] does not compare the speed of the main channel and separate channel for sending notifications. Therefore, we find that Gannage paragraph [0023] provides proper reasoning with a rational underpinning to support the legal conclusion of obviousness. *See KSR*, 550 U.S. at 418.

b) Do the Gannage and Funato references constitute analogous art?

Appellants argue (App. Br. 10-11; Reply Br. 2-3) Gannage is non-analogous art because Gannage is concerned with a different problem than Funato. Appellants contend (App. Br. 11) that Gannage is concerned with the problem of transferring voice over data channels, while Funato is

concerned with the problem of changing endpoint addresses. Appellants also argue (Reply Br. 2-3) that Gannage is not within Appellants' field of endeavor because the Examiner's characterization of Gannage and Appellants' field of endeavor as packet based communications is too broad.

We are not persuaded. Appellants' narrow view of the relevant field does not necessarily define the prior art's scope. The field of endeavor can be correctly determined "by consulting the structure and function of the claimed invention as perceived by one of ordinary skill in the art" with "reference to explanations of the invention's subject matter in the patent application ." *See Bigio*, 381 F. 3d at 1325-26. Gannage's (§ [0023]) and Funato's (p. 231) inventions similar to Appellants' invention (Spec. 8:8-17) are directed to the field of packet based communications.)

c) Would the combination of Funato and Gannage have taught or suggested the limitation of "informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address" as recited in claim 1?

Appellants argue (App. Br. 11) that the combination of Funato and Gannage would not have taught or suggested the limitation of "informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address" as recited in claim 1. Appellants argue (*id.*) that Gannage's disclosure of the use of a separate channel for the purpose of transmitting voice data does not suggest the desirability of using a separate channel to provide notification of a change of endpoint address in a method of migrating from one endpoint address to another.

We are not persuaded by Appellants' argument. The secondary reference of Gannage, paragraph [0023], was relied upon for teaching

sending notifications (not voice data) over a separate channel (FF 1). Appellants' arguments improperly focus on the teachings of the applied prior art references individually instead of addressing what their combined teachings would have suggested to one of ordinary skill in the art. *See Keller*, 642 F.2d at 425.

The Examiner reasoned (Ans. 4-5, 22) that the primary reference Funato taught the portion of the limitation "informing the non-migrator . . . of the change to the new endpoint address" (FF 4). Therefore the combination of Gannage and Funato would have taught or suggested the limitation at issue. *See KSR*, 550 U.S. at 416.

Thus, we will sustain the Examiner's rejection of independent claim 1 and of independent claims 12, 20, 21, and 22 that have similar limitations as claim 1. We will also sustain the Examiner's rejection of dependent claims 2-5, 8-11, and 13-19 which fall with independent claims 1 and 12 respectively as no additional arguments of patentability were presented with respect to these claims. *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

CONCLUSION

The Examiner did not err in determining that Funato in view of Gannage would have taught the limitation of "informing the non-migrator, via a channel separate from the channel of the session between the migrator and the non-migrator, of the change to the new endpoint address" as recited in claim 1.

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ORDER

The decision of the Examiner to reject claims 1-5 and 8-22 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc